



No. 9

April 19, 2013

S. 743 – Marketplace Fairness Act of 2013

On April 16, 2013, Senator Enzi introduced S. 743, which was placed on the Senate Calendar via Rule 14 on April 17.

Noteworthy

- S. 743 is identical to an earlier bill by Senator Enzi, S. 336.
- The Marketplace Fairness Act would allow states to require out-of-state sellers to collect and remit sales and use taxes for the state. States must meet certain simplification requirements to be authorized to do this.
- The Marketplace Fairness Act was the subject of a budget resolution [amendment](#) that passed the Senate on March 22, 2013.

Background

All but [five](#) states in the U.S. have statewide sales taxes. Sales taxes are paid by the consumer to the business selling the good or service, and the business then remits the tax to the state or local government. If the consumer is purchasing a good or service from a business in a different state, that consumer typically owes a “use” tax to the state where the good or service is used if the state where the product will be used has a sales tax. The consumer is never taxed twice; in sales tax states, a consumer only has to pay either sales tax or use tax.

In 1992 the Supreme Court [held](#) that states with sales/use taxes cannot require out-of-state businesses to withhold sales taxes. The [Streamlined Sales and Use Tax Agreement](#) (SSUTA) is an agreement between various states that seeks to have states simplify their sales tax and use tax laws. [Membership](#) in the SSUTA includes: 22 [full member](#) states (their laws are in compliance with SSUTA requirements); two associate member states (their laws are largely, but not

completely, compliant with SSUTA); and 18 advisory states and Washington, D.C. (their laws do not comply with SSUTA).

Bill Provisions

Section 1: Short Title

The short title is the “Marketplace Fairness Act of 2013.”

Section 2: Authorization to Require Collection of Sales and Use Taxes

Subsection (a) would allow all SSUTA member states to require sellers in other states to collect and remit sales/use taxes to the SSUTA member state. Sellers in every state, not just SSUTA member states, would be required to collect and remit sales/use taxes. Small sellers outlined in subsection (c) would be exempt from this requirement. Member states would have to comply with simplification requirements in subsection (b) in order to be granted this authority to require remittance. States may begin requiring out-of-state sellers to remit sales/use taxes 90 days after the state publishes its intent to do this.

Subsection (b) would allow non-member states to require sellers in other states to collect and remit sales/use taxes to the state in question if the state complies with simplification requirements.

The simplification provisions required of states by subsections (a) and (b) are:

- 1) provide a single entity within the state for state and local sales tax administration, audits, and tax return processing;
- 2) the state cannot require a remote seller to file tax returns more frequently than in-state sellers;
- 3) provide a uniform sales/use tax base;
- 4) define the source of a sale as the location of the purchaser or the delivery address for the item purchased;
- 5) define which items are taxable and which are not taxable under state law;
- 6) provide free software for out-of-state sellers that calculates tax due on each transaction, files tax returns, and updates any tax rate changes;
- 7) provide certification for software providers, and such software must be capable of calculating and filing tax returns for all states qualified under this act;
- 8) do not hold out-of-state sellers legally liable for errors of certified software providers;
- 9) do not hold certified software providers legally liable for misinformation provided by out-of-state sellers;
- 10) do not hold out-of-state sellers or certified software providers legally liable for errors of the state; and
- 11) provide 90 days notice of a change in tax rates.

Subsection (c) provides an exemption for small sellers. States can only require out-of-state sellers to collect and remit sales/use taxes under this act if the seller has gross annual receipts of more than \$1 million.

Section 3: Limitations

This section states that this act does not require the collection of any other taxes except sales/use taxes. The act does not affect licensing or regulation any person or business. The act should not be construed as encouraging states to impose new sales/use taxes. The act has no effect on intrastate sales and has no effect on the Mobile Telecommunications Sourcing Act (relating to sourcing cellular telephone calls).

Section 4: Definitions and Special Rules

This section contains various definitions, including defining sourcing as the location of the purchaser or the delivery address for the item purchased. A state is defined to include the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and other territories or possessions of the U.S.

Section 5: Severability

This section states that if any portion of this Act is held unconstitutional, the remainder of the act shall remain in force.

Section 6: Preemption

This section states that except as otherwise provided in this act, it does not preempt or limit any state or local government power.

Administration Position

The Administration has not released a Statement of Administration Policy on this bill.

Budgetary Impact

A cost estimate from the Congressional Budget Office is not available.

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